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contract for building a house, evidence that an amount of 10 per cent. on the contract price, stipulated to be forfeited if the house was not finished at a certain day, was intended by the parties as liquidated damages, and not as a penalty, is inadmissible. *Van Buren v. Diggles*, 52 U. S. (11 How.) 461, 13 L. Ed. 771.

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## DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

### Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

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#### PENDLETON *v.* COMMONWEALTH.

Sept. 16, 1909.

[65 S. E. 536.]

**1. Taxation (§ 59\*)—Personal Taxation—Liability.**—The liability to personal taxation is determined not by one's citizenship, but by his residence, and hence in deciding such question whether or not he has relinquished his citizenship in the manner provided by Code 1904, § 40, is immaterial.

[Ed. Note.—For other cases, see Taxation, Dec. Dig. § 59.\* 13 Va.-W. Va. Enc. Dig. 101, et seq. 14 id. (Supt.) 1001.]

**2. Taxation (§ 20\*)—Personal Tax—Nonresident.**—The state has no jurisdiction to assess a tax as a personal charge against a nonresident, nor as a general rule can the personality of a nonresident be taxed unless it has an actual situs within the state.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 51-54; Dec. Dig. § 20.\* 13 Va.-W. Va. Enc. Dig. 101, et seq. 14 id. (Supt.) 1001.]

**3. Domicile (§§ 2, 4\*)—Change—“Residence”—“Domicile.”**—The words “residence” and “domicile” are not convertible terms, the latter being a word of more extensive signification, and including, beyond mere physical presence at the particular place, positive or presumptive proof of an intention to make it a permanent abiding place; yet where a party is already abiding at a particular place while his domicile is elsewhere, and while so abiding he forms an intention to make it his home permanently, or for an indefinite period, and continues to abide there pursuant to such purpose, he thereby acquires a new domicile.

[Ed. Note.—For other cases, see Domicile, Cent. Dig. §§ 2, 5-23; Dec. Dig. §§ 2, 4\* 3 Va.-W. Va. Enc. Dig. 113, et seq.

For other definitions, see Words and Phrases, vol. 3, pp. 2168-2179; vol. 8, pp. 7641, 7642; vol. 7, pp. 6151-6161; vol. 8, p. 7788.]

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

**4. Taxation (§ 106\*)—Personal Taxation—Residence.**—Plaintiff declared in open court in 1907 that he was a resident of Washington City, and notified the assessor of the district in which his farm was situated, and where he had been assessed as a resident of this state, that he was a resident of such city. Since that time he and his family resided for the greater part of the time in that city, spending only a few days at his farm. Held, that he was not a resident of this state, so as to be subject to personal taxation in 1908.

[Ed. Note.—For other cases, see *Taxation*, Cent. Dig. § 204; Dec. Dig. § 106.\* 13 Va.-W. Va. Enc. Dig. 101; 14 id. (Supt.) 1001.]

**5. Banks and Banking (§ 119\*)—Relation between Depositor and Bank—“Bailment.”**—A general deposit in a bank creates the relation of debtor and creditor between the bank and the depositor, and, though called a deposit, it is a loan, and not a bailment.

[Ed. Note.—For other cases, see *Banks and Banking*, Cent. Dig. § 289; Dec. Dig. § 119.\* 2 Va.-W. Va. Enc. Dig. 262.

For other definitions, see *Words and Phrases*, vol. 1, pp. 673-676.]

**6. Taxation (§ 95\*)—Nonresidents—Bank Deposits.**—Under Code 1904, § 487, making all personal estate within the commonwealth and the moneys and credits of persons residing therein subject to taxation, and section 489, relating to the construction of the revenue laws, the general deposits of a nonresident's money in a bank of this state are not taxable here.

[Ed. Note.—For other cases, see *Taxation*, Cent. Dig. §§ 190-192; Dec. Dig. § 95.\* 13 Va.-W. Va. Enc. Dig. 101, et seq.; 14 id. (Supt.) 1001.]

Judgment reversed. All the judges concur.

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S. H. HAWES & CO. et al. v. WM. R. TRIGG CO. et al.

Sept. 9, 1909.

[65 S. E. 538.]

**1. Assignments (§ 51\*)—Equitable Assignments—Contracts to Pay.**—A shipbuilding company having contracts with the federal government for the building of several vessels, by depositing the contracts in a bank with power of attorney authorizing it to collect payments by the government on the contract, on the faith of which the bank made loans to the company, effectuated a valid equitable assignment of the contracts.

[Ed. Note.—For other cases, see *Assignments*, Cent. Dig. § 106; Dec. Dig. § 51.\* 1 Va.-W. Va. Enc. Dig. 762, et seq.]

**2. Assignments (§ 68\*)—Validity—Claim against Federal Government.**—Rev. St. U. S. § 3477 (U. S. Comp. St. 1901, p. 2320), making all assignments of any claim upon the United States null and void,

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.